



**U.S. Department of Justice**

Civil Division

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Via E-mail

*Washington, DC 20530*

February 5, 2018

Mr. Austin Evers  
American Oversight  
1030 15<sup>th</sup> Street, NW  
Suite B255  
Washington, DC 20005

Request No. 145-FOI-15780  
145-FOI-15781  
HDK

Dear Mr. Evers:

This is the response of the Civil Division, Department of Justice to your Freedom of Information Act request for records concerning the Affordable Care Act. This Office received your request on November 1, 2017.

The Civil Division located 90 pages responsive to your request. Thirty-three pages are released to you in full and six pages are released to you in part. Forty-two pages are withheld in full.

The Civil Division withheld certain information because it is protected from disclosure under the FOIA pursuant to:

- 5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential; and
- 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process privilege and the attorney work-product privilege; and
- 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

Please be advised that the Civil Division referred six pages to the Office of Information Policy (OIP) for processing and direct response to you. See 28 C.F.R. § 16.4 (2016). If you have any questions concerning the status of this referral, please contact OIP at the following:

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, DC 20530-0001

In addition, the Civil Division referred three pages to the Office of the Solicitor General (OSG) for processing and direct response to you. See 28 C.F.R. § 16.4 (2016). If you have any questions concerning the status of this referral, please contact OSG at the following:

Valerie H. Yancey  
FOIA Officer and Executive Officer  
Office of the Solicitor General  
Department of Justice  
950 Pennsylvania Avenue, N.W., Room 6627  
Washington, DC 20530-0001

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at 202-514-2319 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>.

Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Hirsh D. Kravitz", with a long, sweeping horizontal stroke extending to the right.

Hirsh D. Kravitz  
Senior Supervisory FOIA Counsel  
Office of FOIA, Records, and E-discovery

**From:** [Davis, Ethan \(CIV\)](#)  
**To:** [Sturgill, Lowell \(CIV\)](#); [Collette, Matthew \(CIV\)](#); [Salzman, Joshua M. \(CIV\)](#); [Schoen, Karen A. \(CIV\)](#)  
**Cc:** [Bennett, Michelle \(CIV\)](#)  
**Subject:** FW: contraceptive coverage attorney's fees  
**Date:** Wednesday, September 27, 2017 4:06:45 PM  
**Attachments:** (b) (4)  
(b) (5)

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(b) (5)



From: Anthony J Dick [<mailto:ajdick@jonesday.com>]  
Sent: Tuesday, September 26, 2017 3:08 PM  
To: Davis, Ethan (CIV) <(b) (6)>  
Cc: David T Raimer <dtraimer@jonesday.com>; Paul M. Pohl <pmpohl@JonesDay.com>; John D. Goetz <jdgoetz@JonesDay.com>; Matthew A. Kairis <makairis@JonesDay.com>; Lee F DeJulius Jr <lfdejulius@JonesDay.com>  
Subject: Re: contraceptive coverage attorney's fees

Ethan,

Attached please find a spreadsheet containing the requested information regarding fees. This captures our work on these matters from their inception, including the first round of litigation (we have excluded some cases that were dismissed on ripeness grounds and not refiled). We have also included hours spent on strategic work for all cases, as well as FOIA litigation related to these matters (which produced documents used to litigate these cases).

All best,

Anthony

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Anthony Dick (<<http://www.jonesday.com/esdreiband/>>bio<<http://www.jonesday.com/ajdick/>>)  
Associate  
JONES DAY® - One Firm Worldwide <<http://www.jonesday.com/>>  
51 Louisiana Ave NW  
Washington DC 20001-2113  
Office +1.202.879.7679

From: "Davis, Ethan (CIV)" <Ethan.Davis@usdoj.gov<<mailto:Ethan.Davis@usdoj.gov>>>  
To: David T Raimer <dtraimer@jonesday.com<<mailto:dtraimer@jonesday.com>>>, Anthony J Dick  
<ajdick@jonesday.com<<mailto:ajdick@jonesday.com>>>  
Date: 09/26/2017 10:36 AM  
Subject: contraceptive coverage attorney's fees

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David and Anthony,

As I mentioned to David, we're asking for an accounting of hours spent on each case, attorneys who worked on each matter, hours spent by those attorneys, hourly rates, and years out of law school. Is it possible to get that information today? If not, can you give me a sense of when we can expect it? Much appreciated.

Ethan

Ethan P. Davis  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Civil Division, Consumer Protection Branch  
(b) (6)

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=====

**From:** [Davis, Ethan \(CIV\)](#)  
**To:** [Bennett, Michelle \(CIV\)](#); [McElvain, Joel L \(CIV\)](#); [Sandberg, Justin \(CIV\)](#)  
**Subject:** RE: contraceptive coverage attorney's fees  
**Date:** Wednesday, September 27, 2017 6:26:35 AM

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(b) (5)

From: Bennett, Michelle (CIV)  
Sent: Tuesday, September 26, 2017 9:38 PM  
To: Davis, Ethan (CIV) <(b) (6)>; McElvain, Joel L (CIV) <(b) (6)>;  
Sandberg, Justin (CIV) <(b) (6)>  
Subject: RE: contraceptive coverage attorney's fees

(b) (5)

From: Davis, Ethan (CIV)  
Sent: Tuesday, September 26, 2017 3:22 PM  
To: Bennett, Michelle (CIV) <(b) (6)>; McElvain, Joel L (CIV) <(b) (6)>; Sandberg, Justin (CIV) <(b) (6)>  
Subject: Fwd: contraceptive coverage attorney's fees

Ethan P Davis

Deputy Assistant Attorney General

Civil Division, Consumer Protection Branch

(b) (6)

Sent from my Verizon, Samsung Galaxy smartphone

**From:** [Dick, Anthony J.](#)  
**To:** [Davis, Ethan \(CIV\)](#)  
**Subject:** RE:  
**Date:** Thursday, October 05, 2017 7:07:05 PM

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I think we'll be good with this, give me a call when you get a chance. Number below or my cell, (b) (6)

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Anthony Dick ([bio](#))  
Associate  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
51 Louisiana Ave NW  
Washington DC 20001-2113  
Office +1.202.879.7679

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**From:** Davis, Ethan (CIV) [mailto:Ethan.Davis@usdoj.gov]  
**Sent:** Thursday, October 5, 2017 6:40 PM  
**To:** Dick, Anthony J.  
**Subject:**

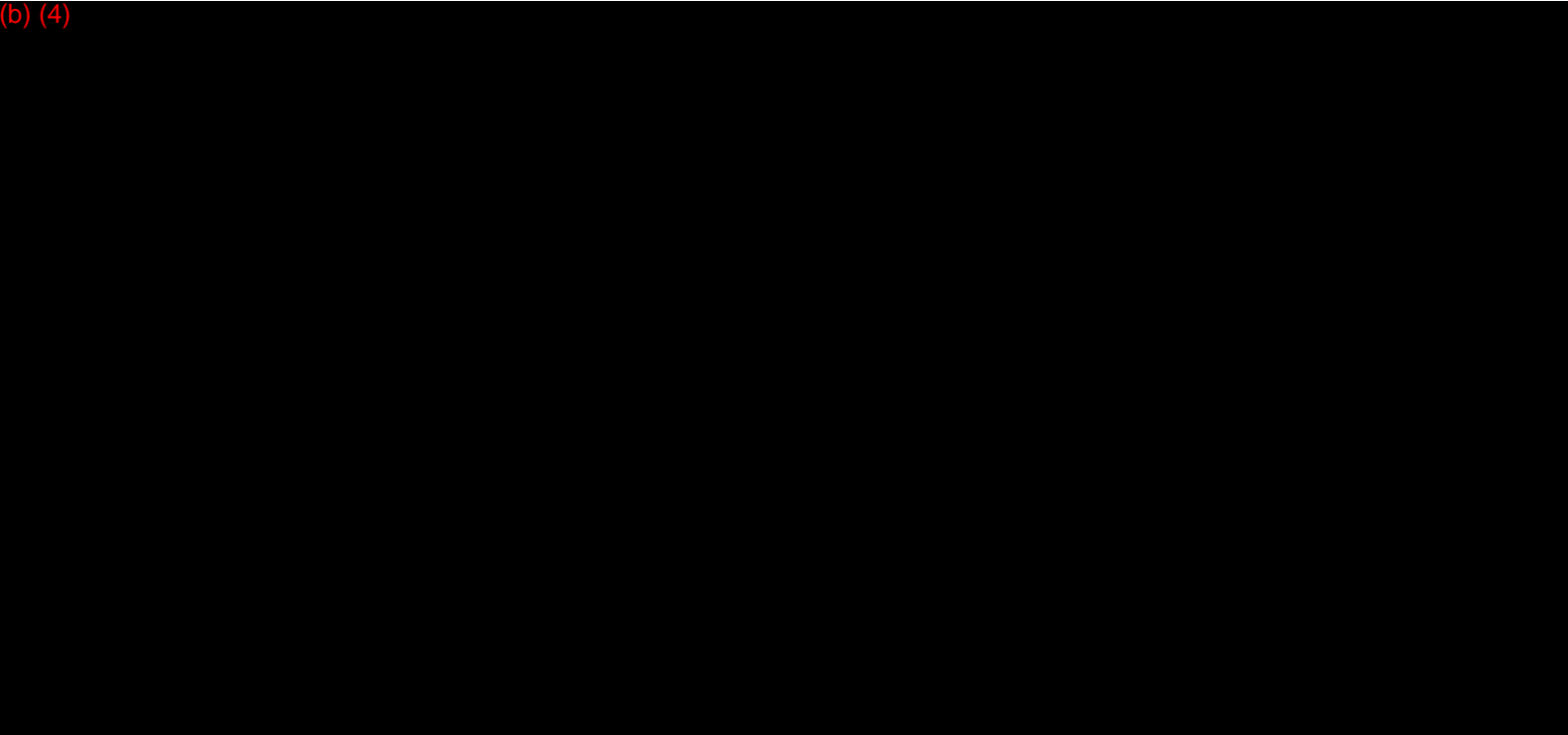
Pursuant to Federal Rule of Appellate Procedure 42(b), the parties in the *Zubik* and *Persico* appeals, Nos. 14-1376 & 14-1377, hereby stipulate and agree that those appeals should be dismissed. Each party shall bear its own costs. This stipulation does not affect the consolidated appeals in *Geneva College*, Nos. 13-3536 & 14-1374, as the Plaintiffs-Appellees in those cases are not a party to this stipulation.

Ethan P. Davis  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Civil Division, Consumer Protection Branch

(b) (6)

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(b) (4)



Grand Total	\$	29,208,698.03	54605
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**U.S. Department of Justice**  
**Office of the Solicitor General**

*Executive Officer*  
**APR 16 2018**

*Washington, D.C. 20532*

**VIA U.S. MAIL or VIA EMAIL to <[foia@americanoversight.org](mailto:foia@americanoversight.org)>**

Austin Evers  
America Oversight  
1030 15<sup>th</sup> Street, NW  
Suite B255  
Washington, DC 20005

Re: OSG FOIA No. **2018-127051**

Dear Mr. Evers:

This letter responds to your Freedom of Information Act (FOIA) request dated October 1, 2017, to the Civil Division of the Department of Justice. Three pages responsive to that request was referred to the Office of the Solicitor General (OSG) by the Civil Division on February 5, 2018, in which you requested records concerning the Affordable Care Act.

Our office is releasing all three (3) pages. Some portion of these records have been redacted under Exemption (b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process and attorney-client privileges, and (b)(6), which involves matters of personal privacy. We are providing these records to you at no cost.

If you wish to discuss any aspect of your request, you may contact our FOIA Coordinator at [osgfoia@usdoj.gov](mailto:osgfoia@usdoj.gov) or at 202-514-2203, using the assigned FOIA tracking number. You may also write to OSG at:

OSG FOIA Public Liaison  
Office of the Solicitor General  
950 Pennsylvania Avenue, N.W  
Washington, DC 20530-0009

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services

National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770; toll free at 1-877-684-6448  
Facsimile: 202-741-5769

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site:

<https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

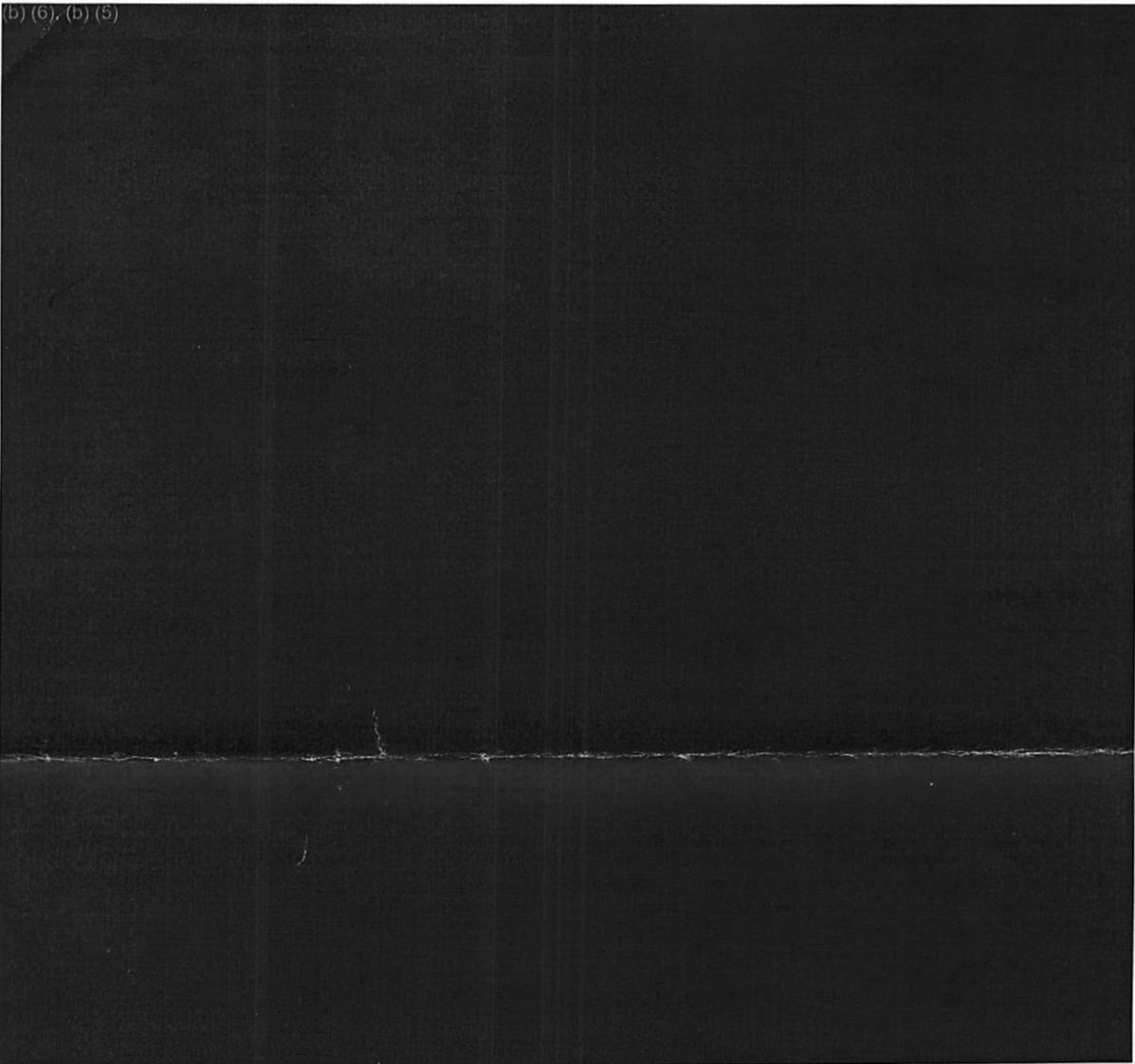
V. Yancey

Enclosure:

- Three (3) pages of records.

VY/bt

(b) (6), (b) (5)



**From:** Kairis, Matthew A. [<mailto:makairis@JonesDay.com>]

**Sent:** Friday, October 06, 2017 11:58 AM

**To:** Salzman, Joshua M. (CIV) <(b) (6)>; Dick, Anthony J.

<[ajdick@jonesday.com](mailto:ajdick@jonesday.com)>; Raimer, David T. <[dtraimer@jonesday.com](mailto:dtraimer@jonesday.com)>; Rotatori, Mark P.

<[mprotatori@JonesDay.com](mailto:mprotatori@JonesDay.com)>; Bean, Meghan Sweeney <[msbean@jonesday.com](mailto:msbean@jonesday.com)>; Allen, Jr., Thomas

F. <[tallen@jonesday.com](mailto:tallen@jonesday.com)>

**Cc:** Collette, Matthew (CIV) <(b) (6)>; Nemeroff, Patrick G. (CIV)

<(b) (6)>; Myron, Laura E. (CIV) <(b) (6)>

**Subject:** RE: Contraceptive Coverage Litigation

We will get you a response as soon as we can. With the appeal dismissed, would you consent to making the district court preliminary injunctions permanent?



Matthew A. Kairis (Bio)

Partner

JONES DAY® - One Firm Worldwide<sup>SM</sup>

325 John H. McConnell Boulevard, Suite 600

Columbus, OH 43215

Office +1.614.281.3605

[makairis@jonesday.com](mailto:makairis@jonesday.com)

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**From:** Salzman, Joshua M. (CIV) (b) (6)

**Sent:** Friday, October 6, 2017 11:49 AM

**To:** Kairis, Matthew A. <[makairis@JonesDay.com](mailto:makairis@JonesDay.com)>; Dick, Anthony J. <[ajdick@jonesday.com](mailto:ajdick@jonesday.com)>; Raimer, David T. <[dtraimer@jonesday.com](mailto:dtraimer@jonesday.com)>; Rotatori, Mark P. <[mprotatori@JonesDay.com](mailto:mprotatori@JonesDay.com)>; Bean, Meghan Sweeney <[msbean@jonesday.com](mailto:msbean@jonesday.com)>; Allen, Jr., Thomas F. <[tallen@jonesday.com](mailto:tallen@jonesday.com)>

**Cc:** Collette, Matthew (CIV) (b) (6); Nemeroff, Patrick G. (CIV)

(b) (6); Myron, Laura E. (CIV) (b) (6)

**Subject:** Contraceptive Coverage Litigation

Dear Counsel:

As you may have seen, the Department of Health and Human Services, Department of the Treasury and the Internal Revenue Service issued an Interim Final Rule today. The new rule replaces the existing rule that is challenged in the contraceptive coverage litigation. In light of the new rule, the government is considering moving to dismiss its appeal in the following cases:

Archdiocese of St. Louis v. Burwell, No. 14-3016 (8th Cir.)

Diocese of Fort Wayne-South Bend Inc. v. Burwell, No. 14-1431 (7th Cir.)

Catholic Charities, Diocese of Fort Worth, Inc. v. Burwell, No. 14-10661 (5th Cir.)

University of Dallas v. Burwell, No. 14-10241 (5th Cir.)

Please let me know as soon as possible whether you will consent to such a dismissal. Our intent is to file the motion this afternoon. If we do not hear from you by 3:30, we may file our motion indicating that we have not yet had received your position.

Best regards,

Joshua M. Salzman

Attorney, Civil Appellate Staff

U.S Department of Justice

(b) (6)

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so that our records can be corrected.\*\*\*